

Volume 7

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
BEFORE THE HONORABLE VINCE CHHABRIA

JESSE PEREZ,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	NO. C 13-5359 VC
	)	
A. GATES, et al.,	)	
	)	
Defendants.	)	
_____	)	

San Francisco, California  
Wednesday, November 25, 2015

**TRANSCRIPT OF PROCEEDINGS**

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Wednesday - November 25, 2015

8:07 a.m.

P R O C E E D I N G S

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(Proceedings were heard out of the presence of the jury:)

**THE COURT:** Can we talk about jury instructions without Mr. Perez?

**MR. BENEDETTO:** Yes, sir.

**THE COURT:** All right. I want to make -- I want to start exactly at 8:30.

By the way, I'm going to hold everybody to the time limits they announced yesterday. Kristen will set the timer, and the plaintiffs will have 45 minutes and the defendants will have an hour.

I would be surprised if it really takes you that long; and if questions start getting repetitive and stuff, I'm going to be more aggressive about cutting you off. So just I want to let you know that.

On the jury instructions, I made a couple little tweaks to what we put out last night just in the interest of focusing the jury a little more and making it, you know, a little bit more clear.

So Instruction Number 2, I just propose to change the title to instead of "Damages," "Compensatory Damages."

Instruction Number 3, on the second line I propose to add the word "compensatory," so that it says, "Plaintiff has failed

1 to prove compensatory damages."

2 In the Instruction Number 4, beginning of the third  
3 paragraph, I thought it was worth making absolutely sure the  
4 jury understands that it is only to consider Sergeant Gates'  
5 conduct on the punitive damages question, so I made a couple  
6 tweaks that are designed to make that a little more clear.

7 So in the beginning of the third paragraph, I added the  
8 words -- I propose to add the words "against Anthony Gates," so  
9 that it says, "If you find that punitive damages against  
10 Anthony Gates are appropriate," et cetera, et cetera.

11 And then the second sentence, the last two words of the  
12 second sentence are "any party." I propose replacing "any  
13 party" with "Gates or Perez."

14 And then in the next sentence -- the next sentence it says  
15 "reprehensibility of the defendant's conduct." I thought it  
16 would be more appropriate to say "reprehensibility of Gates'  
17 conduct."

18 And then the last sentence of that paragraph, "In order to  
19 punish the defendant," it is suggested -- I suggest replacing  
20 it with, "In order to punish Gates for harm."

21 And that's it. Those are my proposed tweaks to what I put  
22 out last night. Any concerns? I know you may have other  
23 concerns with the instructions, but any concerns with those?

24 **MR. SEALS:** No objection from the defendants,  
25 Your Honor.

1           **MR. BENEDETTO:** None from us, Your Honor.

2           **THE COURT:** Okay. Anything else regarding the  
3 instructions?

4           **MS. NYGAARD:** No.

5           **MR. BENEDETTO:** Nothing else.

6           **THE COURT:** Okay. How about the verdict form?

7           **MR. SEALS:** The defendants' only comment is that  
8 there's no signature place for the foreperson.

9           **THE COURT:** We will add that.

10          **MR. SEALS:** Okay.

11          **THE COURT:** Anything from you?

12          **MR. BENEDETTO:** No objection from the plaintiffs.

13          **THE COURT:** Okay. And then, let's see, so who is your  
14 first witness? Is it Mr. Perez?

15          **MR. BENEDETTO:** Mr. Perez.

16          **THE COURT:** Okay. And how long do you expect him to  
17 be on?

18          **MR. BENEDETTO:** I mean, under 45 minutes.

19          **THE COURT:** Okay. And that's your only witness?

20          **MR. BENEDETTO:** Yes.

21          **THE COURT:** Okay. So we'll do Mr. Perez. We'll take  
22 a five-minute break after Mr. Perez.

23               And then who are your witnesses?

24          **MR. SEALS:** Defendants will call Eric Healy and  
25 Anthony Gates. Both should be probably 10 to 15 minutes at the

1 most for each of them.

2 **THE COURT:** Okay. And then are there any stipulations  
3 about, like, net worth, or anything along those lines?

4 **MR. SEALS:** We haven't made any, but we'll take a  
5 brief moment to discuss them.

6 **THE COURT:** I assume it's not going to take that long  
7 to put that on, so I'm not insisting that you reach a  
8 stipulation. But is there anything that you anticipate will  
9 take long that is worthy of discussion of a stipulation, or  
10 have you thought about that?

11 (No response.)

12 **THE COURT:** No? Okay.

13 And shall I read the instructions to the jury before we  
14 proceed with the evidence?

15 **MS. NYGAARD:** Yes.

16 **MR. SEALS:** Yes.

17 **MR. BENEDETTO:** That's fine with us.

18 **THE COURT:** Okay. I'll do that. So I'll fix these up  
19 real quick, and we'll be out here at 8:30 sharp.

20 **THE CLERK:** Can I call the case and have them make  
21 appearances?

22 **THE COURT:** Oh, sorry.

23 See, I'm in such a rush to get the jury home for  
24 Thanksgiving, that I didn't even allow Kristen to call the  
25 case.

1 Go ahead.

2 **THE CLERK:** Calling Case Number 13-CV-5359, Perez v.  
3 Gates, et al.

4 Counsel, please state your appearances for the record.

5 **MR. BENEDETTO:** Good morning, Your Honor. Matthew  
6 Benedetto and Katie Moran on behalf of Jesse Perez, who is not  
7 present yet.

8 **THE COURT:** Good morning.

9 **MS. NYGAARD:** Good morning. Jennifer Nygaard and  
10 Elliott Seals from the California Attorney General's Office on  
11 behalf of the defendants who are here.

12 **THE COURT:** Good morning.

13 Okay. So we'll see you at 8:30 sharp. Thanks.

14 (Recess taken at 8:12 a.m.)

15 (Proceedings resumed at 8:21 a.m.)

16 (Proceedings were heard out of the presence of the jury:)

17 **THE COURT:** Okay. Kristen is handing each of you a  
18 copy of the final jury instructions for damages and the final  
19 verdict form.

20 So I think what we'll do is have Mr. Perez testify, we'll  
21 take about a five-minute break, and then we will -- the defense  
22 can put on its evidence, and then we'll go straight to closings  
23 after that without a break. And that way we'll probably have  
24 the jury back in there at 9:30-ish, or something like that.

25 Anything else before we call in the jury?

1           **MS. NYGAARD:** Nothing.

2           **THE COURT:** Okay. Go ahead and bring them in.

3           **THE CLERK:** They will remain seated.

4           **THE COURT:** Yes. Everyone remain seated. Thank you.

5           (Proceedings were heard in the presence of the jury:)

6           **THE COURT:** Okay. Good morning.

7           As I indicated, we're going to go very quickly and  
8 efficiently this morning. I am going to read you a few short  
9 instructions regarding damages. You are going to hear a small  
10 amount of testimony regarding damages, and then we're going  
11 to -- and then you'll hear some very short closing arguments  
12 about damages, and then we're going to send you back into the  
13 jury room to deliberate regarding damages.

14          There will be a verdict form for you, which is shorter  
15 than the one you were dealing with before.

16          And now let me just read you the instructions regarding  
17 damages, and you'll have a written set of these instructions  
18 with you -- you'll have written sets of these instructions with  
19 you in the jury room, so you don't need to take any notes, or  
20 anything like that.

21                           **JURY INSTRUCTIONS**

22          **THE COURT:** Because you found defendants  
23 Anthony Gates, Daniel Gongora, Eric Healy, and Guillermo  
24 Pimentel violated plaintiff Jesse Perez's constitutional  
25 rights, you must award him compensation for the constitutional



1 violation.

2 You must also award Mr. Perez compensatory damages for any  
3 actual harm he experienced as a result of the constitutional  
4 violation.

5 "Damages" means the amount of money that will reasonably  
6 and fairly compensate the plaintiff for any harm you find was  
7 caused by these defendants. The plaintiff has the burden of  
8 proving damages by a preponderance of the evidence. You should  
9 consider the following:

10 The nature and extent of the harm, the mental or emotional  
11 pain and suffering experienced by the plaintiff.

12 It is for you to determine what damages for actual harm,  
13 if any, have been proved. Your award must be based on evidence  
14 and not upon speculation, guesswork, or conjecture.

15 Nominal Damages. The law which applies to this case  
16 authorizes an award of nominal damages. If you find that the  
17 plaintiff has failed to prove compensatory damages as defined  
18 in these instructions, you must award nominal damages. Nominal  
19 damages may not exceed one dollar.

20 Punitive Damages. Because you found that defendant  
21 Anthony Gates' conduct that harmed plaintiff Jesse Perez was  
22 malicious, oppressive, or in reckless disregard of the  
23 plaintiff's rights, you may, but are not required to, award  
24 punitive damages.

25 The purposes of punitive damages are to punish a defendant

1 and to deter similar acts in the future. Punitive damages may  
2 not be awarded to compensate a plaintiff. That's compensatory  
3 damages.

4 The plaintiff has the burden of proving by a preponderance  
5 of the evidence that punitive damages should be awarded; and if  
6 so, the amount of any such damages. If you find that punitive  
7 damages against Anthony Gates are appropriate, you must use  
8 reason in setting the amount. Punitive damages, if any, should  
9 be in an amount sufficient to fulfill their purposes, but  
10 should not reflect bias, prejudice, or sympathy towards Gates  
11 or Perez.

12 In considering the amount of any punitive damages,  
13 consider the degree of reprehensibility of Gates' conduct,  
14 including whether the conduct that harmed the plaintiff was  
15 particularly reprehensible because it also caused harm or posed  
16 a substantial risk of harm to people who are not parties to the  
17 case.

18 You may not, however, set the amount of any punitive  
19 damages in order to punish Gates for harm to anyone other than  
20 the plaintiff in this case.

21 In addition, you may consider the relationship of any  
22 award of punitive damages to any actual harm inflicted on the  
23 plaintiff.

24 Punitive damages may be awarded even if you award the  
25 plaintiff only nominal and not compensatory damages.

1 And those will be your instructions governing this phase  
2 of the trial.

3 And with that, we'll begin with the presentation of the  
4 evidence.

5 Mr. Benedetto?

6 **MR. BENEDETTO:** The plaintiff calls Jessie Perez.

7 **THE COURT:** Okay. Mr. Perez, you're still under oath.

8 **THE WITNESS:** Yes.

9 **JESSE PEREZ, PLAINTIFF WITNESS, PREVIOUSLY SWORN**

10 **DIRECT EXAMINATION**

11 **BY MR. BENEDETTO:**

12 **Q.** Good morning, Mr. Perez.

13 **A.** Good morning.

14 **Q.** Aside from this lawsuit, have you filed any other lawsuit  
15 since October 10th, 2012?

16 **A.** No.

17 **Q.** Prior to October 2012, had you participated in any hunger  
18 strikes while a prisoner at Pelican Bay?

19 **A.** Yes.

20 **Q.** And when was this?

21 **A.** This would be in 2011 in July and in September of 2011 as  
22 well.

23 **Q.** And can you explain for the jury how these hunger strikes  
24 began?

25 **MS. NYGAARD:** Objection, Your Honor. MIL.

1           **THE COURT:** Overruled.

2           **THE WITNESS:** The hunger strikes began because the  
3 prisoners at solitary confinement at Pelican Bay objected to  
4 the practice as inhumane and began, in a series of protests, to  
5 request that the Department overhaul the policy so that it can  
6 begin to have a more humane housing policy.

7           **BY MR. BENEDETTO:**

8           **Q.** And do you know how many -- or, roughly, how many  
9 prisoners participated in the 2011 hunger strikes?

10          **A.** In the very first hunger strike that took place in July,  
11 approximately, I believe, 3,000 were involved; and as the  
12 second hunger strike came about, the number increased to, I  
13 believe, 8,000.

14          **Q.** Did the prisoners who participated in the hunger strikes  
15 at Pelican Bay, yourself included, make any demands of the  
16 CDCR?

17          **A.** Yes. There was specifically five core demands.

18          **Q.** And what were they?

19          **A.** One was individual accountability. The other one was to  
20 overhaul the debriefing policy and the active/inactive review  
21 process, abolish solitary confinement, provided adequate food,  
22 and increase programming for SHU prisoners and privileges.

23          **Q.** How long did each of the hunger strikes last?

24          **A.** It was incremental. The first one lasted, I believe, 22  
25 days; and the second one lasted, I believe, 23; and the third

1 one, which was in 2013, lasted approximately 60 days.

2 Q. And did you refuse food for each of those periods of time?

3 A. Yes.

4 Q. Why did the 2011 hunger strikes stop?

5 A. The initial hunger strike stopped because the Department  
6 of Corrections agreed with the demands that were being made by  
7 the prisoner representatives to overhaul the housing policy of  
8 individuals who had been placed there on a SMR validation  
9 label.

10 Q. And you used the term our "representatives." What do you  
11 mean by that term?

12 A. The people that were engaging in negotiations with the  
13 Department of Corrections as a result of the hunger strike.

14 Q. Did the CDCR agree to any of the demands that you had  
15 made?

16 A. That is my understanding.

17 Q. Do you have an understanding of whether the 2011 hunger  
18 strikes had any influence on the CDCR with respect to the  
19 development of the STG Pilot Program?

20 A. My understanding is that the decision to overhaul the  
21 validation process and the placement policy of the Department  
22 was borne directly out of the objections and the demonstrations  
23 by the prisoners at Pelican Bay and throughout the entire state  
24 of California.

25 Q. Now, during the first phase of this trial, do you remember

1 testifying about four articles that were confiscated from your  
2 cell on October 10th, 2012?

3 A. Sure.

4 Q. Were these the only articles that you had ever written  
5 while housed in the SHU?

6 A. No.

7 Q. You wrote -- how many other articles would you say you  
8 wrote?

9 A. Approximately an additional four more.

10 Q. And did you write these articles for a publication outside  
11 of Pelican Bay?

12 A. Yes.

13 Q. To which publications did you send these articles?

14 A. Various publications. One of them was, I believe, the  
15 *San Francisco Bay View*. The other one was *The Rock* newsletter.  
16 The other one was *California Prison Focus*. And I think that's  
17 the only ones I can remember at this point.

18 Q. And can you tell the jury, or explain for the jury, what  
19 sort of publications those are?

20 A. These are general publications that have -- especially the  
21 *San Francisco Bay View*, has wide distribution throughout the  
22 Bay Area and throughout the state of California. The other  
23 publications are prisoner rights publications.

24 Q. And what topics did you address in these articles?

25 A. In general, policies that I objected to from the

1 Department of Corrections, but specifically the practice of  
2 long-term solitary confinement.

3 Q. Were any of your articles, in fact, published?

4 A. Yes.

5 Q. Do you consider yourself a prisoner rights activist?

6 A. My answer to the question is a definitive yes. By the  
7 first hunger strike in 2011, my time in solitary confinement  
8 led me to experience quite vividly the horrific and  
9 torturous -- how the horrific and torturous conditions of  
10 confinement in solitary forced once vibrant and engaging human  
11 beings to devolve into a subversion of their original self.

12 This experience and the separation from my family had a  
13 profound effect on me, and it became something that was very  
14 difficult for me to let go no matter how hard I tried. So I  
15 began to speak out, and I began to write articles in opposing  
16 this practice specifically.

17 Q. You remember testifying about the cell search on  
18 October 10th, 2012; is that right?

19 A. Yes.

20 Q. And do you recall testifying in the first phase of this  
21 trial about what you could see from inside your cell?

22 A. Yes.

23 Q. Can you explain to the jury whether the same case would be  
24 for what you could hear from inside your cell, how sound  
25 carries in the SHU?

1 A. Yes.

2 Q. Can you explain to the jury your understanding of how --  
3 and your experience of how voices and sounds carry in the SHU?

4 A. Because of the small, confined space, there is a large  
5 echo that carries throughout the entire housing pod, much like  
6 this place here, so you can hear quite a lot of the sounds that  
7 take place in solitary confinement.

8 Q. And was that true of the time when you were housed in D9?

9 A. Yes.

10 Q. And was that true of the time when you were housed in D9,  
11 Cell 113?

12 A. Yes.

13 Q. Okay. Back to October 10th of 2012 after you returned to  
14 your cell that day, how did you feel?

15 A. I felt devastated really because of everything that I had  
16 been working on up until that point when I first was assigned  
17 to solitary confinement. In my mind it appeared to be  
18 vanishing.

19 Q. And were you scared?

20 A. Yes.

21 Q. And why were you scared?

22 A. Because, again, everything that I'd been working on,  
23 especially trying to get back to a situation where I can be  
24 reengaged with my family in a meaningful way, it appeared to be  
25 just evaporating.



1 Q. And when you were served with a serious RVR by  
2 Sergeant Gates on October 21st, how did that make you feel?

3 A. It exacerbated the way that I felt about whether or not  
4 there was a possibility of -- for me to return to a situation  
5 where I could again reengage with my family.

6 Q. And how did that experience affect you otherwise?

7 A. It generated a sense of hopelessness. I had insomnia. I  
8 could not sleep. I had a lot of anxiety and, in general, I  
9 became just hopeless.

10 Q. Did you seek medical attention for how you felt?

11 A. Yeah. In July, I believe, of 2013, I asked  
12 Sergeant Cummins if I could speak to a psychiatrist.

13 Q. And did you eventually do that?

14 A. A lady appeared in front of my cell a few days afterwards,  
15 and she mentioned to me, "Perez, do you want to talk?"

16 And when I asked her, "Here?", she said, "Yeah."

17 At that point I told her, "I'm okay."

18 Q. And did that individual identify herself as a counselor?

19 A. My understanding is that -- no, she did not identify  
20 herself as a counselor, but she would come around saying,  
21 "Mental health." So from that I inferred that she was a  
22 psychiatrist or a therapist.

23 Q. Now, despite how you were feeling at this time, did you  
24 continue to write articles?

25 A. Yes.

1 Q. So how scared were you if you were continuing to publish?

2 A. Plenty. But, as I mentioned before, I felt very strongly  
3 about the practice of solitary confinement, so regardless of  
4 what I was risking, I felt like I had to speak out.

5 I felt like one of the things that kept coming back to my  
6 mind was a quote that I read one time, "As long as the world  
7 shall last, there will be wrongs; and if no man objects and no  
8 man rebels, those wrongs will last forever." That became kind  
9 of like a source of strength for me. And in remembering those  
10 words, I, nevertheless, decided to risk whatever circumstances  
11 or whatever consequences to speak out.

12 Q. Since you have been in the general population at  
13 Pelican Bay, have you been frightened that you would be sent  
14 back to the SHU?

15 A. Yes.

16 Q. And why is that?

17 A. In my experience, what we were doing, speaking out against  
18 the practice, most employees of the Department did not agree  
19 with that. I think any negative publicity that is brought to  
20 the Department of Corrections isn't generally -- is generally  
21 objected to or disagreed by their employees. But I,  
22 nevertheless, again, felt strongly against the practice of  
23 solitary confinement, so I continued to speak out even then.

24 Q. And despite these fears, why did you proceed with this  
25 lawsuit?

1   **A.**    I felt like the public needed to know about what's going  
2   on behind closed doors, behind the wall.  I felt like, you  
3   know, our story -- my story needed to be told because in  
4   reality, most of what goes on in prison is not really  
5   publicized.  So that was one of the main motivators for me, to  
6   sort of educate the public about what goes on in these public  
7   taxpayer-funded institutions.

8           **MR. BENEDETTO:**  Thank you.  No further questions.

9                           **CROSS-EXAMINATION**

10   **BY MS. NYGAARD:**

11   **Q.**    Good morning, Mr. Perez.

12   **A.**    Good morning, Ms. Nygaard.

13   **Q.**    So isn't it true that you've been endorsed for transfer to  
14   a prison closer to your family now?

15   **A.**    That's correct.

16   **Q.**    Okay.  So let's go back to October 2012.  When you  
17   received the Rules Violation Report, you knew that you would  
18   get a disciplinary hearing on that; correct?

19   **A.**    That's correct.

20   **Q.**    And you knew that at that hearing you would be able to  
21   present your version of the incident; correct?

22   **A.**    That's correct.

23   **Q.**    And you knew this because this was not the first serious  
24   Rules Violation Report you had ever received; correct?

25   **A.**    I knew that because I knew what my rights were.

1 Q. But this was not the first serious Rules Violation Report  
2 you had ever received?

3 A. That's correct.

4 Q. And you knew that at the disciplinary hearing that the  
5 Rules Violation Report could be dismissed; correct?

6 A. Correct.

7 Q. I'd now like to call up Exhibit 4, which has previously  
8 been admitted.

9 So while that's being pulled up, Mr. Perez, you were  
10 familiar with the upcoming STG policy changes in October of  
11 2012; correct?

12 A. That's correct.

13 Q. And that's because you testified earlier in this trial  
14 that you had received a copy of the pilot program delivered to  
15 your housing unit; correct?

16 A. That's correct.

17 Q. Okay. So I'd now like to direct your attention to this  
18 section that's being highlighted, the STG Disciplinary Matrix.

19 So you had seen this policy before -- you had seen this  
20 policy -- strike that.

21 You had seen this policy in October 2012; correct?

22 A. That's correct.

23 Q. So you knew that a gang nexus needed to be clearly  
24 identified in the "Specific Act" box of the RVR for it to  
25 qualify as to STG behavior under the Disciplinary Matrix;

1 correct?

2 **MR. BENEDETTO:** Objection. Misstates the document.

3 **THE COURT:** Overruled.

4 **THE WITNESS:** My understanding was that the nexus --

5 **MS. NYGAARD:** That's a yes-or-no answer. Move to  
6 strike as nonresponsive.

7 **THE COURT:** Sustained.

8 **THE WITNESS:** Yeah.

9 **BY MS. NYGAARD:**

10 **Q.** Okay. And you knew that there was no gang nexus  
11 articulated in the "Specific Act" box of the RVR that  
12 Officer Gates had written; correct?

13 **A.** No, I did not know that.

14 **MS. NYGAARD:** You can take Exhibit 4 off now. Thank  
15 you.

16 **Q.** And could you please briefly describe what credit loss is  
17 to the jury as far as, you know, inmate earning credit or  
18 losing credit?

19 **A.** As I understand, state law requires the Department of  
20 Corrections to grant prisoners credit off their sentence.

21 **Q.** And sometimes an RVR could result in loss of credit;  
22 correct?

23 **A.** Yes.

24 **Q.** But you knew in this instance -- strike that.

25 But in this instance you had not received any credit loss

1 because you had been issued the RVR; correct?

2 A. I didn't receive any credit loss because the RVR was  
3 dismissed.

4 Q. And you were not placed in any more restrictive housing  
5 while the RVR was pending; correct?

6 A. I was held in the same cell that I initially was in.

7 Q. And you would have been housed in that cell at that point  
8 in time regardless of whether you had been issued the RVR;  
9 correct?

10 A. That's my understanding.

11 Q. And you claim that you suffered depression upon the  
12 issuance of the RVR; is that correct?

13 A. That's correct.

14 Q. But the depression that you claimed you suffered upon the  
15 issuance of the RVR subsided after you were found not guilty  
16 less than a month later; correct?

17 A. Somewhat.

18 Q. And you also claimed that you suffered anxiety after  
19 receiving the RVR; correct?

20 A. That's correct.

21 Q. But, again, the anxiety that you claimed that you suffered  
22 upon the issuance of the RVR subsided after it was dismissed  
23 just less than a month later; correct?

24 A. Somewhat.

25 Q. And you never requested any medical treatment for insomnia

1 or any other injuries; correct?

2 **A.** After my experience with the psychiatrist, no.

3 **Q.** Before that psychiatrist came in July of 2013, you had  
4 never requested any medical treatment; correct?

5 **A.** That's correct.

6 **Q.** And you didn't request any mental health treatment until  
7 July of 2013; correct?

8 **A.** That's when I felt compelled to do so.

9 **Q.** And isn't it true that you made that request in July of  
10 2013 because you felt that CDCR was not complying with the  
11 settlement agreement in your other lawsuit?

12 **A.** In addition to other reasons, yeah.

13 **Q.** And what other reasons?

14 **A.** I still had no idea what was happening. Based on what I  
15 had experienced in October 10th, 2012, I didn't know if,  
16 indeed, Officer Gates, or any of the other officers, or any  
17 other employee with the Department was going to make good on  
18 the threat to keep me in solitary confinement.

19 **MS. NYGAARD:** Your Honor, I'd like to direct your  
20 attention to page 91 of Mr. Perez's deposition transcript,  
21 lines 18 through 25.

22 (Pause in proceedings.)

23 **THE COURT:** One moment.

24 (Pause in proceedings.)

25 **THE COURT:** Sure. Do you want to give that extra copy

1 to Mr. Benedetto?

2 **MR. BENEDETTO:** I'd appreciate it. Thank you.

3 What page and line again, Jenn?

4 **MS. NYGAARD:** Sure. Page 91, lines 18 through 25.  
5 Actually, we might want to add in lines 13 through 17 for a  
6 complete picture.

7 **MR. BENEDETTO:** No objection.

8 **THE COURT:** You can read it.

9 **MS. NYGAARD:** (reading)

10 **"Q.** Approximately how long after you made the oral  
11 request until she arrived?

12 **"A.** I believe I made the oral request on July 8th, 2013;  
13 and, once again, in July 10th, 2013, so approximately, to  
14 answer your question, three days.

15 **"Q.** Okay. And why did you put in that request to speak  
16 to a therapist?

17 **"A.** During this time of numerous attempts to have the  
18 Department of Corrections comply with the settlement  
19 agreement, I was becoming hopeless, desperate, depressed,  
20 anxiety. So my brother has PTSD, and he told me how much  
21 it helped him to speak with a therapist. So I thought I  
22 would give it a shot."

23 **Q.** So, Mr. Perez, you didn't request to speak to a therapist  
24 to address any mental health issues that you were still  
25 experiencing from the trashed cell nine months earlier;



1 correct?

2 A. Specifically, no.

3 Q. And you didn't request to speak to a therapist to address  
4 any mental health issues that you were still experiencing  
5 because you had been issued a Rules Violation Report that was  
6 dismissed eight months earlier; correct?

7 A. That's correct.

8 Q. And you never sought any other treatment for the feelings  
9 of depression or anxiety you were experiencing; correct?

10 A. That's correct.

11 Q. And when that therapist came to your cell in July of 2013,  
12 you testified earlier that you told her you were okay; correct?

13 A. That's correct.

14 Q. And you did not request to speak with her in a more  
15 private setting; correct?

16 A. That's correct.

17 Q. You also never submitted a request to see a mental health  
18 provider in a confidential setting any time after that  
19 encounter, did you?

20 A. Not after that encounter.

21 Q. And you never put in a request to speak to a mental health  
22 provider in a confidential setting before she came to your cell  
23 in July 2013 either, did you?

24 A. That's correct.

25 Q. And while you were housed in the Security Housing Unit, a

1 clergy member would come and talk to you every two months or  
2 so; correct?

3 A. On average.

4 Q. Yet you never sought any sort of counseling from the  
5 clergy, did you?

6 A. No.

7 Q. And you never sought any other treatment for your anxiety  
8 or depression; correct?

9 A. Not after that experience with that therapist.

10 Q. And you never spoke to a medical doctor about your  
11 insomnia?

12 A. No.

13 Q. Now, we know that you filed an inmate appeal regarding the  
14 October incident, but isn't it true that you've continued to  
15 file inmate appeals since the October incident?

16 A. Yes.

17 Q. And as you discussed with Mr. Benedetto, you continued to  
18 write articles critical of CDCR after the cell search; correct?

19 A. Yes.

20 Q. And you've mailed those out for publication?

21 A. Yes.

22 Q. And, in fact, you wrote one in response to a December 6,  
23 2012, article that had been published in *Rolling Stone*  
24 *Magazine*; correct?

25 A. Yes. Excuse me. It wasn't an article. It was just sort

1 of like a commentary.

2 Q. Okay. And you wrote that shortly after the *Rolling Stone*  
3 *Magazine's* December 6, 2012, issue; correct?

4 A. Yes.

5 Q. And you also wrote another article approximately 20 to 30  
6 days after the tragic Sandy Hook shooting; correct?

7 A. Yes.

8 Q. And that was in approximately December 2013?

9 A. I believe it was about 30 days after the incident in  
10 Sandy Hook happened.

11 Q. Okay. So approximately December 2013-January 2014,  
12 somewhere around there?

13 A. I can't remember the exact date of the incident.

14 Q. Okay. And you wrote an article just two weeks after the  
15 one we were just discussing in response to Sandy Hook; correct?

16 A. I believe so, yes.

17 Q. And you wrote an article titled "Prisoner Political Action  
18 Committee Proposal" in September 2013; correct?

19 A. Correct.

20 Q. And this was published in the *San Francisco Bay View*;  
21 correct?

22 A. That's my understanding.

23 Q. And you wrote another article "Prisoner Political Action  
24 Committee Update," and that was published in the *San Francisco*  
25 *Bay View* in January of 2014; correct?

1 A. Yes.

2 Q. And most recently you submitted an article that was  
3 published in the *San Francisco Bay View* just November 12th,  
4 2015; correct?

5 A. I'm not aware of that.

6 Q. Did you submit an article to the *San Francisco Bay View*  
7 about this trial?

8 A. Yes.

9 Q. Okay. And was that submitted within weeks of coming here  
10 to testify?

11 A. Yes.

12 Q. Okay. You also participated in a hunger strike in July of  
13 2013; correct?

14 A. Yes.

15 Q. And that hunger strike was to bring public awareness to  
16 the Security Housing Unit?

17 A. In part.

18 Q. And you've continued to help other inmates with their  
19 legal work; correct?

20 A. Yes.

21 Q. And you've organized a prisoner activity group; correct?

22 A. Yes.

23 MS. NYGAARD: Just one moment, Your Honor.

24 THE COURT: Sure.

25 (Pause in proceedings.)

1 **BY MS. NYGAARD:**

2 **Q.** And did you find out that your RVR had been dismissed when  
3 you were at the RVR hearing?

4 **A.** Yes.

5 **Q.** And that was November 18th?

6 **A.** I believe that's correct, yes.

7 **MS. NYGAARD:** Okay. No further questions. Thank you.

8 **THE COURT:** Mr. Benedetto?

9 **MR. BENEDETTO:** Very briefly.

10 **REDIRECT EXAMINATION**

11 **BY MR. BENEDETTO:**

12 **Q.** Mr. Perez, when the mental health professional approached  
13 your cell in July of 2013, did she offer to speak to you in a  
14 confidential setting?

15 **A.** No.

16 **Q.** And with respect to the articles that you just discussed  
17 with Ms. Nygaard that postdated October of 2012, did you  
18 believe you were putting yourself at risk by writing those  
19 articles?

20 **A.** Every time I wrote an article.

21 **Q.** And why was that?

22 **A.** Because of the experience that I had in October 10, 2012,  
23 I believed that if I continued writing, that I was risking  
24 additional retribution.

25 **MR. BENEDETTO:** Thank you. Nothing further.

1           **THE COURT:** Anything further, Ms. Nygaard?

2           **MS. NYGAARD:** Nothing.

3           **THE COURT:** Okay. We're well ahead of schedule.

4 We're going to take a very short break, five minutes. I'll  
5 have you go back to the jury room for five minutes, and then we  
6 will resume with a small amount of additional testimony, and  
7 we'll be ready to send the case back to you shortly.

8           (Proceedings were heard out of the presence of the jury:)

9           **THE COURT:** Okay. We'll see you back at 9:00 o'clock.

10 You can have your first witness ready on the stand if you want.

11           **MS. NYGAARD:** Okay.

12           **THE WITNESS:** May I step down, Your Honor?

13           **THE COURT:** You may.

14           **THE WITNESS:** Thank you.

15                       (Witness excused.)

16                       (Recess taken at 8:56 a.m.)

17                       (Proceedings resumed at 9:01 a.m.)

18           (Proceedings were heard out of the presence of the jury:)

19           **THE COURT:** All right. Shall we bring in the jury?

20           (Proceedings were heard in the presence of the jury:)

21           **THE COURT:** All right, Mr. Seals?

22           **MR. SEALS:** Defendants call Sergeant Anthony Gates.

23           **THE COURT:** Sergeant Gates, you're still under oath as  
24 well.

25           **THE WITNESS:** Okay.

ANTHONY GATES, DEFENDANTS WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION

**BY MR. SEALS:**

**Q.** Good morning, Mr. Gates.

**A.** Good morning.

**Q.** Plaintiff is seeking punitive damages against you, so I'm going to ask you a few questions about your financial situation.

**A.** Okay.

**Q.** What are your liabilities or how much money do you owe for credit cards, house mortgage, car payments?

**A.** Probably -- I mean, maybe, like, 420, 430.

**Q.** 420 or 430,000?

**A.** Yeah, 430.

**Q.** And approximately how much do you owe for mortgage?

**A.** My mortgage?

**Q.** Does that include a mortgage payment?

**A.** Oh, yeah. Yes.

**Q.** How much do you owe? How much do you owe on your home?

**A.** On the house, 290.

**Q.** 290,000?

**A.** Yeah. Sorry. 290,000.

**Q.** Okay. And how much did you purchase that home for?

**A.** 305.

**Q.** Thousand?

1 A. Yeah.

2 Q. Okay. And who lives in that house with you?

3 A. My wife and son.

4 Q. And is your wife's name also on the mortgage?

5 A. I think so. Probably. I don't know.

6 Q. And approximately how much do you owe -- do you own a car?

7 A. Two.

8 Q. How much do you owe on those cars?

9 A. 60 -- 60,000. I don't know. 65 maybe.

10 Q. And about how much money do you owe in credit card or  
11 other personal debts?

12 A. I'm not sure how it worked out. I kind of went over it  
13 last night. It came out to be about 425, 430 total. I'm not  
14 really sure. The rest of whatever minus the house and cars  
15 would be revolving normal debt.

16 Q. Okay. So you said you worked it out last night. You mean  
17 you looked over your --

18 A. I looked over it, yeah. So my best estimate is pretty  
19 close probably, but not exact.

20 Q. And do you have any other assets that you own? Do you own  
21 any other houses?

22 A. No.

23 Q. Do you own anything else that would be considered an  
24 asset?

25 A. Not that I can think of.



1 Q. And are you still employed by the California Department of  
2 Corrections and Rehabilitation?

3 A. I am still employed there, yes.

4 Q. And what is your salary?

5 A. I don't know. I don't know what it is. It's 80-ish,  
6 probably. I don't know.

7 Q. Approximately 80,000?

8 A. Yeah.

9 Q. Per year?

10 A. Yes.

11 Q. Do you get paid monthly?

12 A. Yes.

13 Q. How much do you receive every month after taxes?

14 A. Like 52 -- like 5200 probably.

15 Q. Is that about \$5,200?

16 A. Yes.

17 Q. Okay. And approximately how much do you have to pay in  
18 bills every month?

19 A. My bills are about 64 -- 6400.

20 Q. And you stated that you're married; correct?

21 A. Yeah. Yes.

22 Q. What does your wife do?

23 A. She's a mental health caseworker for the County of Curry.

24 Q. Approximately how much money does she make?

25 A. Take-home? Probably 24.

1 Q. \$2400?

2 A. \$2400.

3 Q. Per month?

4 A. Yes, sir.

5 Q. And so we've just gone through your monthly income, your  
6 monthly liabilities, your assets, and your --

7 A. It was a lot of fun, yeah.

8 Q. -- mortgage payments. And so would you say your net worth  
9 is positive or negative?

10 A. Negative.

11 Q. And approximately how negative is your net worth --

12 A. I don't know.

13 Q. -- including your liabilities of 420,000?

14 A. My house is probably worth probably what I paid for it, I  
15 would think, 305. The cars are probably worth around what I  
16 owe on them total. So negative whatever credit card debt. I  
17 mean, what is that? About 50,000 probably.

18 MR. SEALS: Okay. No further questions.

19 Oh, sorry.

20 (Pause in proceedings.)

21 BY MR. SEALS:

22 Q. How old is your son?

23 A. 11.

24 Q. So are you and your wife responsible for taking care of  
25 him?

1 A. Yes.

2 MR. SEALS: No further questions.

3 THE COURT: Ms. Moran?

4 CROSS-EXAMINATION

5 BY MS. MORAN:

6 Q. Good morning, Sergeant Gates.

7 Sergeant Gates, you were promoted; is that right?

8 A. Yes.

9 Q. And since October of 2012, how many times have you been  
10 promoted?

11 A. Just one.

12 Q. And when was that promotion?

13 A. I do not -- I don't really know. Recently.

14 Q. Recently?

15 A. Uh-huh.

16 Q. Did that promotion come with a raise in your pay?

17 A. Yeah. That's -- I reflected that in my answer, my  
18 monthly -- or annual income.

19 Q. Okay. You say you own two cars; is that correct?

20 A. I owe on them but, yeah. I pay for them, but I own -- I  
21 have two cars, yes.

22 Q. What are the makes of those cars?

23 A. Ford.

24 Q. Both of them Ford?

25 A. Yeah.

1 Q. And are they -- what type of Ford?

2 A. I have a Ford F-350 truck, a 2010, and a Ford Mustang. My  
3 wife drives a Mustang.

4 Q. And do you own any other recreational vehicles?

5 A. I do. I have a trailer that's probably not worth what I  
6 owe on it, like a Travel Trailer.

7 Q. I see.

8 A. I don't know -- actually, I shouldn't say that because I  
9 actually have no idea, but I don't think it's worth what I owe  
10 on it.

11 Q. Any boats?

12 A. No.

13 Q. Or ATVs?

14 A. No.

15 Q. Do you own any guns?

16 A. Yes.

17 Q. How many guns do you own?

18 A. I don't even know. Maybe seven or eight probably.

19 Q. And how much would you say you spend a year in guns and  
20 ammunition?

21 A. Now? Nothing.

22 Q. In years past?

23 A. Years past I would spend money when I could, when I could  
24 afford it --

25 Q. Okay.

1 A. -- which was most months. I mean, I would buy at least  
2 ammo. You have to qualify for work.

3 Q. And then how much would you say you would spend -- in the  
4 years that you were spending money on ammunition, how much do  
5 you think you spent?

6 A. On ammunition, in a year, I mean, probably -- it's a total  
7 guess, I couldn't say -- maybe a couple hundred dollars. I  
8 don't know.

9 MS. MORAN: Thank you. No further questions.

10 THE COURT: Anything further, Mr. Seals?

11 MR. SEALS: Yes, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. SEALS:

14 Q. Hello again, Mr. Gates.

15 You stated that you were promoted to Sergeant; correct?

16 A. Yes.

17 Q. Was that within the last year?

18 A. Yeah. Yes.

19 Q. And you said that that came with a pay raise; correct?

20 A. Yep.

21 Q. Now, have you worked any overtime over the last year?

22 A. No.

23 Q. And in years previous, did you used to work overtime?

24 A. I generally -- I'd try to get as much as I could, yeah.

25 Q. So have you made more or less money this year than you

1 have made in the past?

2 A. Less.

3 Q. Why is it that you're not working overtime anymore?

4 A. I'm not working at all.

5 Q. Why is it that you're not working at all?

6 A. I'm out on medical.

7 Q. And what led to you being out on medical?

8 A. I had some heart attacks.

9 Q. And when did that happen?

10 A. Black Friday last year, day after tomorrow.

11 Q. And you said "some heart attacks." How many heart attacks  
12 was that?

13 A. I don't even know.

14 Q. And so at the current moment you are not working? You're  
15 not actually going to Pelican Bay to work; correct?

16 A. No.

17 Q. And you're unable to work overtime; correct?

18 A. Yeah, that's correct, I can't work.

19 Q. And do you anticipate being able to work overtime again in  
20 the near future?

21 A. I don't anticipate going back to work.

22 MR. SEALS: Thank you, Mr. Gates.

23 MS. MORAN: Nothing further.

24 THE COURT: Nothing further?

25 Okay. Thank you, Sergeant Gates.

(Witness excused.)

**THE COURT:** Next witness?

**MR. SEALS:** The defendants have no further witnesses,  
Your Honor.

**THE COURT:** Okay. Anything further from plaintiff?

**MR. BENEDETTO:** Nothing, Your Honor.

**THE COURT:** Okay. That concludes the presentation of  
testimony relating to damages. We will now proceed directly to  
very short closing arguments by the lawyers. I'm giving each  
side ten minutes, no more than ten minutes, and then  
Mr. Perez's attorney will have two minutes for rebuttal, and  
then we'll be able to send you back to the jury room.

Mr. Benedetto?

**CLOSING ARGUMENT**

**MR. BENEDETTO:** When you returned a verdict in favor  
of Mr. Perez and against defendants Gates, Gongora, Healy, and  
Pimentel, you concluded that the evidence in this case proved  
that these defendants retaliated against Mr. Perez in violation  
of the First Amendment.

Now it will be your charge as a jury to decide what amount  
of damages to award Mr. Perez to compensate him for that  
First Amendment violation and to deter this type of conduct  
from ever happening again through an award of punitive damages  
against Sergeant Gates. Soon you will have the opportunity to  
say with a number, "This can't happen again. We demand

1 better."

2 But how do you value a right that too many of us forget we  
3 even have? How do you value a right whose meaning and value in  
4 this case are informed so uniquely by living conditions that  
5 none of us has ever experienced, by living conditions you may  
6 not have even known to exist and may now quickly wish to  
7 forget, the SHU at Pelican Bay?

8 The First Amendment right in this case can seem abstract  
9 or academic. You can't see it or touch it or feel it. You  
10 can't measure it or take pictures of it.

11 I can tell you that the right to petition the courts dates  
12 back at least to the Magna Carta in England in 1215. It is  
13 literally part of the First Amendment to the Constitution. The  
14 framers assigned it primary importance, but what does that  
15 mean?

16 There's no formula I can give you, there's no calculation,  
17 and counsel for the defendants can't give you one either. You  
18 have to use other values, other instincts. You will have to  
19 consider the importance of this right to a particular person in  
20 a particular place at a particular time, a person who had  
21 overcome very particular odds to file the lawsuit that he did  
22 in 2005 and to achieve the success that he did seven years  
23 later.

24 On Friday, I told you about a prisoner of ordinary  
25 firmness. Now we're talking about Jesse Perez, no ordinary



1 prisoner.

2       You heard from Mr. Perez again this morning. He told you  
3 some about the history and the context for the events of  
4 October 10th, 2012. He told you that he participated in the  
5 2011 and 2013 hunger strikes at Pelican Bay.

6       Mr. Perez also told you that both before and after  
7 October 2012, he wrote and published articles that criticized  
8 the CDCR's use of long-term solitary confinement. These  
9 articles were part of his prison activism. He wrote these  
10 articles to try to inform the public about the harm of solitary  
11 confinement.

12       This evidence allows you to put Mr. Perez's 2005 lawsuit  
13 into proper context. He filed that lawsuit because he believed  
14 that his gang validation had violated his own constitutional  
15 rights; but as he litigated the suit, as he learned the law and  
16 came to appreciate the good that it can achieve, he came to  
17 realize that he could be the spokesperson for a movement. He  
18 could give voice to the silenced. He could represent their  
19 hopes and their dreams and in doing so, help the CDCR and, in  
20 turn, all of us think of prisoners in a new and brighter light.

21       But as the evidence also shows, on October 10th, 2012,  
22 defendants Gates, Gongora, Healy, and Pimentel tried to  
23 extinguish that light by retaliating against Mr. Perez. On  
24 that day, they tried to silence his voice.

25       They tried to send Mr. Perez, and everyone in D pod within

1 earshot that day, a clear message: File a lawsuit against IGI,  
2 and reap the consequences. Get comfortable.

3 Mr. Perez told you how he felt when he returned to his  
4 cell that day and how he felt when he was issued the RVR 11  
5 days later. He was scared. He was distraught by the  
6 proposition of finding himself at the bottom of that very steep  
7 hill one more time. He couldn't sleep. He had anxiety.

8 You have the power to tell Mr. Perez, "You didn't push  
9 that rock all those long and grim days for nothing. You made  
10 it to the top of the hill, and you earned it. You belong  
11 there. The law can achieve great things and good."

12 You will also be determining punitive damages against  
13 Sergeant Gates. You found that Sergeant Gates punished  
14 Mr. Perez for speaking his mind, for filing a lawsuit against  
15 his colleagues. Now you must award an amount that will deter  
16 Sergeant Gates from doing this again. No longer can  
17 Sergeant Gates, a sworn peace officer, be so cavalier, so  
18 dismissive of the First Amendment rights of the individuals in  
19 his custody. We demand better.

20 Remember some of what Sergeant Gates told you during the  
21 liability phase in this trial, "It was a good RVR." No, it  
22 wasn't. You know that. Lieutenant Anderson knew that.

23 Sergeant Gates would not even admit he was wrong. He sat  
24 up in that witness box and told you that he believed Lieutenant  
25 Anderson was wrong. What would have happened if Lieutenant

1 Anderson had not fairly adjudicated that RVR? Three more years  
2 in the SHU.

3 When asked how soon Sergeant Gates searched Mr. Perez's  
4 cell upon receiving the order to do so, he answered, "I can't  
5 give an exact time, but I would imagine within five minutes of  
6 going, 'Oh, not again, another cell search,' blah, blah, blah,  
7 we probably walked down there."

8 Is this the sort of response you expect from an IGI  
9 officer? Where is the honor that Officer Gongora testified to?

10 You saw Sergeant Gates testify during the first phase of  
11 this trial. Was that the demeanor of someone who had learned  
12 anything or felt any remorse?

13 On the stand Sergeant Gates told you he specifically  
14 recalled thinking about using mace on October 10th, 2012, but  
15 you heard his deposition testimony. Can you believe anything  
16 he said to you?

17 This is no longer about only Mr. Perez. You are not  
18 compensating him. You are punishing Sergeant Gates. You will  
19 be saying, "This conduct is reprehensible and it cannot  
20 continue." If you don't send this message, it will be back to  
21 business as usual at Pelican Bay. Who else will they promote?

22 As I told you on Friday, this is not about just a messy  
23 cell. It is about Jesse Perez's seven-year struggle day in and  
24 day out to prove that he should not be locked away and  
25 forgotten in a concrete coffin for 22 and a half hours a day.

1           **THE CLERK:** Less than two minutes.

2           **MR. BENEDETTO:** The defendants did not retaliate  
3 against someone -- against a random individual. They targeted  
4 someone in particular, someone with a history of activism,  
5 someone with a pen that he was not afraid to use, and someone  
6 with an eloquence that called out from the windowless box that  
7 confined him and demanded to be heard.

8           You now have the opportunity to say, "We heard that voice.  
9 That voice belonged to someone with a future." You heard  
10 Mr. Perez.

11           Don't diminish this because it is just a prison cell. It  
12 was Jesse Perez's home. It was everything he had. It is no  
13 different from a peace officer coming into your home or into  
14 mine and trashing it. But unlike the rest of us who have jobs  
15 and families and hobbies and freedom beyond a space size of  
16 8 feet by 10, Jesse Perez had nothing else. This was his whole  
17 world.

18           The harm in this case is real. It is not abstract. It is  
19 not academic. It is not impossible to imagine. It is not  
20 impossible to feel. We showed you what that harm looks like.  
21 It looks like this (indicating), and like this (indicating).  
22 And the next (indicating). And the next (indicating). Keep  
23 going (indicating).

24           The harm looks like this (indicating). Thank you.

25           **THE COURT:** Ms. Nygaard?

CLOSING ARGUMENT

**MS. NYGAARD:** Good morning, ladies and gentlemen. You will soon be sent back again to the jury room to deliberate and complete another verdict form. This time question one asks you to specify the amount of damages that will reasonably and fairly compensate Mr. Perez for the actions of defendants Gates, Gongora, Healy, and Pimentel.

Now, you heard Mr. Perez testify this morning that he did not seek any mental healthcare, he did not seek any medical care for the depression and anxiety that he claimed he was experiencing. If he was really suffering that much, why did it take him nine months to summon a mental healthcare provider to his cell?

And at that point in time it was for a different reason. It wasn't because he was still experiencing anxiety or depression or insomnia because Mr. Gates had issued him the RVR that was dismissed. It wasn't because he was still experiencing mental health issues because the defendants had trashed his cell. It was because the previous lawsuit that we had discussed earlier in this trial, he felt he wasn't getting that satisfied.

These four officers had nothing to do with that lawsuit. They had nothing to do with fulfilling the terms of that lawsuit.

Mr. Perez was not injured in any way by defendants'

1 actions. There's no evidence to support his theory that he  
2 suffered mental anguish, et cetera. He simply did not request  
3 any care and did not receive any care. He said that clergy  
4 members came by. He never spoke to a clergy member about  
5 anything.

6 He continued to file inmate appeals. He continued to help  
7 other inmates file lawsuits. He continued to write articles  
8 critical of the CDCR and sent for publication. These are all  
9 of his rights under the First Amendment absolutely saying, you  
10 know, that he had a right to do that; but if defendants had  
11 chilled his First Amendment rights so seriously, why did he  
12 continue to do these things? How could he have continued to do  
13 these things if he had been damaged that way?

14 He filed -- he formed a prisoner political action  
15 committee group. He assisted other inmates with lawsuits.  
16 This was not a man who was injured or harmed by defendants'  
17 actions. The evidence just simply does not support it.

18 And, again, plaintiff has the burden of proof to prove  
19 damages by a preponderance of the evidence; and in doing that,  
20 to consider that, you can take into account the nature and  
21 extent of the harm and the mental or emotional pain and  
22 suffering experienced by plaintiff.

23 I'm telling you that he has not proven by a preponderance  
24 of the evidence that he suffered any serious mental or  
25 emotional harm.

1 In lieu of awarding Mr. Perez compensatory damages, you  
2 are permitted, as the judge explained earlier this morning, to  
3 award nominal damages; and, in fact, if you find that he hasn't  
4 proven the compensatory damages at all, then you must award  
5 nominal damages, and the nominal damages may not exceed one  
6 dollar.

7 Ladies and gentlemen, that is the appropriate amount in  
8 this case. Plaintiff has not proven by a preponderance of the  
9 evidence that he was injured in any way.

10 Now, the issue of punitive damages is being brought before  
11 you to decide whether you should award Officer Gates the  
12 punitive damages. That's question two on the verdict form.

13 Again, plaintiff has the burden of proving by a  
14 preponderance of the evidence that punitive damages should be  
15 awarded; and if so, the amount of any damages.

16 If you find that punitive damages are appropriate, you  
17 must use reason in setting the amount. Punitive damages should  
18 be an amount sufficient to fill their purpose but should not  
19 reflect bias, prejudice, or sympathy toward any party. So  
20 regardless of what you feel about Officer Gates personally, you  
21 cannot take that into account.

22 What you need to consider is the degree of  
23 reprehensibility of defendant's conduct, including whether the  
24 conduct harmed the plaintiff was particularly reprehensible  
25 because it also caused substantial harm or posed a substantial

1 risk of harm to people who are not parties to this case.

2 There is simply no evidence that that is what happened  
3 here. No other inmates were harmed by officer Gates issuing a  
4 Rules Violation -- writing a Rules Violation Report that  
5 happened to be dismissed 28 days later. A message wasn't sent  
6 out to other inmates to never file a lawsuit because if you do,  
7 you might get a Rules Violation Report issued for you.

8 The evidence showed that paper was found in Mr. Perez's  
9 toilet. It was not reprehensible for Officer Gates to write up  
10 a Rules Violation Report when he believed that Mr. Perez was  
11 interfering with his ability to get the paper out of the toilet  
12 to discover what was on the paper. It could have prevented  
13 other inmates or other correctional staff, or even civilians in  
14 the outside world, from being killed. It's not reprehensible  
15 for him to have made that decision.

16 And punitive damages -- I'm sorry.

17 You also heard Officer Gates testify this morning that he  
18 owes more than \$430,000 in liabilities. His income is \$1200 a  
19 month less than his debt. This is not a man that should be  
20 punished by an exorbitant amount of punitive damages. He  
21 shouldn't be punished with any punitive damages.

22 He suffered heart attacks a year ago. Now he can't even  
23 return to work because of the heart attacks. So there's no  
24 risk of Officer Gates doing this again to anybody else. He's  
25 not -- you would not be punishing him by awarding punitive



1 damages.

2 You heard that he and his wife drive Fords. They're not  
3 driving Mercedes and, you know, fancy sports cars. They're  
4 driving Fords. He has a son, an 11-year-old son, at home and a  
5 wife. I ask you to take that into account when deciding how  
6 much to award in punitive damages, which I believe is nothing.  
7 There would be nothing gained by awarding punitive damages in  
8 this case.

9 Therefore, when you go back to the jury room and fill out  
10 this proposed verdict form, I ask that in response to question  
11 one, that you award Mr. Perez one dollar in nominal damages,  
12 and that in question two you award zero dollars to  
13 Anthony Gates for punitive damages.

14 Thank you.

15 **THE COURT:** Thank you, Ms. Nygaard.

16 Mr. Benedetto, you have two minutes?

17 **MR. BENEDETTO:** Yes, sir.

18 **REBUTTAL ARGUMENT**

19 **MR. BENEDETTO:** Ladies and gentlemen, you have plenty  
20 of evidence in this case to allow you to conclude that the  
21 defendants knew exactly who Jesse Perez was on October 10th,  
22 2012. Three guys named Perez in the SHU for nearly a decade.  
23 Of course, these defendants knew who Jesse Perez was on that  
24 day, and they targeted him because he stood for something. He  
25 stood for a demand to be heard and not forgotten. He demanded

1 recognition as a person with rights and hopes and a family.

2 He told you that he lived in fear of being sent back to  
3 the SHU. He lived in fear that all of that hard work that he  
4 had put into his lawsuit filed in 2005 with only a seventh  
5 grade education and no legal background, that the defendants  
6 were going to take all of that hard work away from him.

7 Ms. Nygaard continues to try to scare you about the pieces  
8 of paper in the toilet. There is no evidence to support any of  
9 that conjecture. That is reprehensible.

10 Ladies and gentlemen, who else is Pelican Bay going to  
11 promote? When will we speak up and say, "We believe we deserve  
12 better"? Now is the time to send that message loud and clear.  
13 More people than you may even realize are listening.

14 Thank you.

15 **THE COURT:** Okay. Thank you very much.

16 That concludes this phase, the final phase, of the trial  
17 and you may begin your deliberations. Thanks very much.

18 (Jury beginning deliberations at 9:33 a.m.)

19 (Proceedings were heard out of the presence of the jury:)

20 **THE COURT:** Okay. Thank you for being very efficient  
21 about that. Anything to discuss before we break?

22 **MR. BENEDETTO:** No, Your Honor.

23 **MS. NYGAARD:** No.

24 **THE COURT:** Okay. See you later.

25 (Recess taken at 9:34 a.m.)

1           **THE COURT:** All right. Bring in the jury.

2           (Jury enters courtroom at 11:18 A.M.)

3           **THE CLERK:** Please be seated.

4           **THE COURT:** Okay. Ms. Williams, I understand the jury  
5 has reached a verdict with respect to the second phase.

6           **FOREPERSON WILLIAMS:** Yes.

7           **THE COURT:** Okay. Kristen, do you want to grab it and  
8 bring it over?

9           (Whereupon, document was tendered to the Court.)

10          **THE COURT:** Okay. You can read the verdict.

11          **THE CLERK:** Ladies and gentlemen of the jury, listen  
12 to your verdict as it will stand recorded. Omitting the court  
13 and caption.

14          Question 1: Specify the amount of damages that will  
15 reasonably and fairly compensate the plaintiff, Jesse Perez,  
16 for the actions of defendants Anthony Gates, Daniel Gongora,  
17 Eric Healy and/or Guillermo Pimentel. Amount: \$20,000.

18          Question 2: If you find punitive damages should be  
19 awarded against Defendant Anthony Gates, specify the amount.  
20 \$5,000.

21          The presiding juror shall sign and date the special  
22 verdict form and return it to the Court. Dated November 25th,  
23 2015. By Dana Williams, presiding juror.

24          **THE COURT:** Okay. Would anybody like the jury polled?

25          **MS. NYGAARD:** No. That's fine, your Honor.

1           **MR. BENEDETTO:** No, your Honor.

2           **THE COURT:** Okay. Ladies and gentlemen of the jury,  
3 thank you again very much for being so attentive and being so  
4 patient during these proceedings. It's obvious that you were  
5 paying close attention throughout the trial and it's obvious  
6 from the many notes that you sent out that you were approaching  
7 this in a very conscientious fashion. So on behalf of myself  
8 and on behalf of the parties, I want to really thank you for  
9 that and thank you for putting in the time.

10           Now, I want to -- I'm now discharging you and that means  
11 that you are free to go. It means, also, that the admonition  
12 that I've given you is now lifted. You are free to talk about  
13 the case and about the deliberation process, and that  
14 restriction is lifted. You are not required to talk to anybody  
15 about it. If you prefer not to talk to anybody about the trial  
16 or the process, certainly, there is no requirement that you do  
17 and you have the right not to. But if you are interested in  
18 discussing it with people, you're free to do so. And that  
19 includes the lawyers in this case.

20           And what I like to do after a trial is over is -- as I  
21 said, if you like, you're free to go now. But what I like to  
22 do is first invite you back to my Chambers, sit down for a few  
23 minutes, answer any questions that you may have about the  
24 process. And after that I encourage you -- like I said, you're  
25 not required to do it. You're welcome to leave out the main

1 exit and take off and go begin your Thanksgiving preparations,  
2 but after any -- and you don't even need to come meet with me,  
3 in my office with me and my law clerks if you don't want to.  
4 But if you meet with me in my office and, if you wish, you can  
5 come back into the courtroom and the lawyers will be waiting  
6 here in the courtroom to talk to you. Their clients will not  
7 be here.

8 I have a rule that says the clients cannot stick around to  
9 interact with the jurors. But it's very helpful, particularly  
10 when you have younger lawyers, for the lawyers to be able to  
11 interact with you a little bit and sort of ask questions about  
12 what you thought, you know, was particularly effective in a  
13 closing argument and/or during trial or what you thought was  
14 ineffective and whatnot.

15 So, obviously, as I said, you're not required, but I would  
16 encourage you, if you're willing, to spend a little extra time  
17 after we meet to come back -- to come back into the courtroom  
18 and chat with the lawyers. And my law clerks will probably  
19 come observe that process as well, because it's a good learning  
20 experience for them.

21 So with that, I thank you. We'll have you retire back to  
22 the jury room now and I'll be out in a couple minutes and I  
23 will invite you -- if you're still around, I will invite you  
24 back to come see me in Chambers.

25 Thank you very much.

1 (Jury exits courtroom at 11:23 a.m.)

2 **THE COURT:** Okay. Mr. Benedetto, do you want to  
3 prepare a proposed judgment and submit it after its reviewed by  
4 Ms. Nygaard?

5 **MR. BENEDETTO:** Yes, your Honor.

6 **THE COURT:** Okay. Anything else we need to discuss at  
7 the moment?

8 **MR. BENEDETTO:** I guess we would have the one issue of  
9 the equitable relief that was sought in the complaint, and I'm  
10 not sure --

11 **THE COURT:** I can't remember what that was.

12 **MR. BENEDETTO:** With respect to future retaliation by  
13 these defendants. Our client is expected to return to Pelican  
14 Bay for at least a period of time and we would be concerned  
15 about that period of time and going forward as well.

16 **THE COURT:** Okay.

17 **MR. BENEDETTO:** That's the only injunctive relief that  
18 was sought in the complaint that is still viable.

19 **THE COURT:** Okay. I will give that a little bit of --  
20 so you don't need to prepare a proposed judgment yet because  
21 that issue remains.

22 **MR. BENEDETTO:** Okay.

23 **THE COURT:** I'll give that a little bit of thought and  
24 I'll let you know if I need any further briefing on that.

25 Ms. Nygaard, you were going to say something?

1           **MS. NYGAARD:** Yes. Defendants would object to any  
2     injunctive relief. The request that they seek that defendants  
3     and all Pelican Bay and CDCR employees cease from future  
4     retaliation is not narrowly tailored and does not comply with  
5     the Prison Litigation Reform Act.

6           **THE COURT:** Okay. Thank you very much for making this  
7     trial go smoothly and effectively. I thought you all did a  
8     very good job.

9           Thank you for taking on this case on behalf of somebody  
10    who didn't have the money to pay for it.

11          Thank you for being such good public servants. I  
12    appreciate it. And we will see you soon.

13          **THE CLERK:** Court is adjourned.

14          **THE COURT:** And, as I said, lawyers are -- the lawyers  
15    are free to stick around. I'm fairly confident that a good  
16    portion of the jurors will come back and be interested in  
17    talking to you. It's not a time for, you know, lobbying them  
18    or trying to convince them that they were wrong. It's an  
19    opportunity for you to learn from the experience. So, please,  
20    don't sort of abuse it by trying to reargue your case with the  
21    jury.

22          Thank you.

23          **THE CLERK:** Court is adjourned.

24          (Whereupon at 11:26 a.m. further proceedings were  
25    adjourned.)

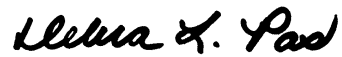
CERTIFICATE OF REPORTER

We certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.



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JoAnn Bryce, CSR 8785, CRR, RMR, RPR



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Debra L. Pas, CSR 11916, CRR, RMR, RPR

Wednesday, November 25, 2015